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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/453,934	05/17/2000	Tetsuro Motoyama	5244-0121-2	7299

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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.	EXAMINER
1940 DUKE STREET	CHANG, JULIAN
ALEXANDRIA, VA 22314	

ART UNIT	PAPER NUMBER
2152	

NOTIFICATION DATE	DELIVERY MODE
08/28/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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PTOL-90A (Rev. 04/07)

		Application No.	Applicant(s)
Office Action Summary		09/453,934	MOTOYAMA ET AL.
		Examiner	Art Unit	
		Julian Chang	2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>10 May 2007</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date <u>07/30/07</u>.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   This Office action is responsive to communication filed on 05/10/2007. Claims 1-

20 are pending, and have been examined.

Terminal Disclaimer

2.   The terminal disclaimer filed on 06/05/07 disclaiming the terminal portion of any

patent granted on this application which would extend beyond the expiration date of

Patent No. 7,120,674 and any patent granted on Application No. 11/389,262 has been

reviewed and is accepted. The terminal disclaimer has been recorded.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created
doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the
unjustified or improper timewise extension of the "right to exclude" granted by a patent
and to prevent possible harassment by multiple assignees.   A nonstatutory
obviousness-type double patenting rejection is appropriate where the conflicting claims
are not identical, but at least one examined application claim is not patentably distinct
from the reference claim(s) because the examined application claim is either anticipated
by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140
F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29
USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.
1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422
F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163
USPQ 644 (CCPA 1969).
        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d)
may be used to overcome an actual or provisional rejection based on a nonstatutory
double patenting ground provided the conflicting application or patent either is shown to
be commonly owned with this application, or claims an invention made as a result of
activities undertaken within the scope of a joint research agreement.
        Effective January 1, 1994, a registered attorney or agent of record may sign a
terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with
37 CFR 3.73(b).

3.   Claims 1-4, 7-10 and 14-20 are rejected on the ground of nonstatutory

obviousness-type double patenting as being unpatentable over claims 1, 8-14 and 17-

20 of **U.S. Patent No. 6,988,141**. Although the conflicting claims are not identical, they

are not patentably distinct from each other because the distinctions in the instant

application would have been obvious over the granted patent. In the instant application,

the applicant claims the selection of application-layer protocols. Since in the granted

patent, the applicant claimed the selection of communication protocols for the

transmission between at least one of a device, an application and an application unit, it

would have been obvious that the protocols used would have been application-layer

protocols.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly
claiming the subject matter which the applicant regards as his invention.

4.   Claims 6 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention. The limitations of claims 6 and 13 contradict the

amendments currently presented in claims 1 and 8.

Claim Rejections - 35 USC § 103

5.   The text of those sections of Title 35, U.S. Code not included in this action can

be found in a prior Office action.

6.   Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Barbieri, et al (US 6,212,160), hereinafter "Barbieri", and further in view of Motoyama

(US 5,818,603), Yeomans (US 6,134,680), and Muralidharan ("Multiprotocol

management agents: a look at an implementation and the issues to consider", 1993).

7.   Regarding claims 1 and 18, Barbieri teaches a method and a product

implementing said method, said method comprising:

        providing a plurality of communications protocols capable of transferring data ('a

plurality of protocols', abstract);

        selecting a first protocol of the plurality of communications protocols to transfer

data to a remote receiver from at least one of a device, and appliance, an application,

and an application unit ('application first attempts to establish a communications

channel by using the preferred protocol', abstract);

        selecting a second protocol of the plurality of communications protocols to

transfer data to the remote receiver from the at least one of a device, and appliance, an

application, and an application unit ('If that fails, the application attempts to establish the

communications channel by using another supported protocol', abstract);

        performing a first attempt to transfer data to the remote receiver from the at least

one of a device, and appliance, an application, and an application unit using the first

selected protocol ('application first attempts to establish a communications channel by

using the preferred protocol', abstract); and

Barbieri fails to explicitly disclose selecting application-layer protocols.

However, Yeomans discloses the selection of application layer protocols from a plurality of application-layer protocols (col. 6, lines 44-62).

, It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to employ application-layer protocols as taught by Yeomans in the system of Barbieri with motivation to provide communications via alternate protocols, thereby increasing compatibility.

Barbieri fails to teach the collection and transferring of collected events at the at least one of a device, an appliance, an application, and an application unit.

However, Motoyama teaches the collection of events and transferring of collected events at the at least one of a device, an appliance, an application, and an application unit (Col. 5, lines 45-52).

It would have been obvious to one of ordinary skill in the art at the time of the invention to collect events and transfer collected events as taught by Motoyama using multiple protocols as taught by Barbieri with motivation to increase compatibility and redundancy in performing diagnostic tasks.

Barbieri fails to teach attempting to transfer collected events using a second protocol regardless of whether a first attempt using a first protocol was successful.

However, Muralidharan teaches the concurrent use of multiple management protocols (§ III. The Common Agent, page 1337).

It would have been obvious to one of ordinary skill in the art at the time of the invention to employ multiple management protocols as taught by Muralidharan in the

system of Barbieri with motivation to take advantage of the different management

functions provided by different management protocols.

8.   Regarding claims 8 and 19, Barbieri teaches a method and a product

implementing said method, said method comprising:

        providing a plurality of communications formats capable of transferring data ('a

plurality of protocols', abstract);

        selecting a first format of the plurality of communications formats to transfer data

to a remote receiver from at least one of a device, and appliance, an application, and an

application unit ('application first attempts to establish a communications channel by

using the preferred protocol', abstract);

        selecting a second format of the plurality of communications format to transfer

data to the remote receiver from the at least one of a device, and appliance, an

application, and an application unit ('If that fails, the application attempts to establish the

communications channel by using another supported protocol', abstract); and

        performing a first attempt to transfer data to the remote receiver from the at least

one of a device, and appliance, an application, and an application unit using the first

selected format ('application first attempts to establish a communications channel by

using the preferred protocol', abstract).

        Barbieri fails to explicitly disclose selecting application-layer protocols.

        However, Yeomans discloses the selection of application layer protocols from a

plurality of application-layer protocols (col. 6, lines 44-62).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to employ application-layer protocols as taught by Yeomans in the system of Barbieri with motivation to provide communications via alternate protocols, thereby increasing compatibility.

Barbieri fails to teach the collection and transferring of collected events at the at least one of a device, an appliance, an application, and an application unit.

However, Motoyama teaches the collection of events and transferring of collected events at the at least one of a device, an appliance, an application, and an application unit (Col. 4, lines 45-52).

It would have been obvious to one of ordinary skill in the art at the time of the invention to collect events and transfer collected events as taught by Motoyama using multiple protocols as taught by Barbieri with motivation to increase compatibility and redundancy in performing diagnostic tasks.

Barbieri fails to teach attempting to transfer collected events using a second protocol regardless of whether a first attempt using a first protocol was successful.

However, Muralidharan teaches the concurrent use of multiple management protocols (§ III. The Common Agent, page 1337).

It would have been obvious to one of ordinary skill in the art at the time of the invention to employ multiple management protocols as taught by Muralidharan in the system of Barbieri with motivation to take advantage of the different management functions provided by different management protocols.

9.   Regarding claims 2-3 and 9-10, Barbieri-Motoyama-Yeomans-Muralidharan

teaches the invention substantially as claimed and described in claims 1 and 8 above,

including a library of code shared between first and second applications and a

dynamically linked library of code shared between first and second applications

(Motoyama: database 28, Fig. 1).

10.   Regarding claim 4, Barbieri-Motoyama-Yeomans-Muralidharan teaches the

invention substantially as claimed and described in claim 1 above, including a plurality

of communication protocols comprise at least one of (1) a store and forward protocol

and (2) a direct connection protocol (Motoyama: Col. 7, lines 4-6).

11.   Regarding claim 5, Barbieri-Motoyama-Yeomans-Muralidharan teaches the

invention substantially as claimed and described in claim 1 above, including a plurality

of communication protocols comprise (1) a simple mail transfer protocol and (2) at least

one of (a) a file transfer protocol and (b) a hypertext transfer protocol (Motoyama: Col.

7, lines 4-6).

12.   Regarding claims 6-7, and 13-14, Barbieri-Motoyama-Yeomans-Muralidharan

teaches the invention substantially as claimed and described in claims 1 and 8 above,

including the use of a second protocol when a first protocol fails (Barbieri: Abstract).

It would have been obvious to one of ordinary skill in the art at the time of

applicant's invention to use the disclosure of Barbieri to provide redundancy through a

plurality of protocols.

13.   Regarding claims 11 and 12, Barbieri-Motoyama-Yeomans-Muralidharan teaches

the invention substantially as claimed and described in claim 8 above, including a

plurality of communication formats (Motoyama: col. 1, lines 52-57; and col. 8, lines 39-

45) which obviously may comprise binary, text, hypertext markup language, and

extended markup language, or compressed format.

14.   Regarding claims 15-17, Barbieri-Motoyama-Yeomans-Muralidharan teaches the

invention substantially as claimed and described in claim 8 above. In addition, it is

obvious that different protocols may work with more than one format.

15.   Regarding claim 20, Barbieri-Motoyama-Yeomans-Muralidharan teaches the

invention substantially as claimed and described in claims 19 above, including

performing a first attempt to transfer collected events comprises performing an attempt

using a first application-layer protocol (Barbieri: 'application first attempts to establish a

communications channel by using the preferred protocol', abstract).

Response to Arguments

16.   Applicant's arguments with respect to claims 1-20 have been considered but are

moot in view of the new ground(s) of rejection.

Conclusion

17.   Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

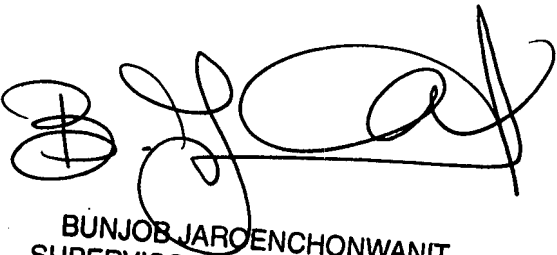than SIX MONTHS from the date of this final action.

18.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Julian Chang whose telephone number is (571) 272-

8631. The examiner can normally be reached on Monday thru Friday 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JC

BUNJOB JAROENCHONWANIT
SUPERVISORY PATENT EXAMINER

8/19/7